

33. (Original) A method according to claim 31, further comprising;  
controlling said supplying of said additives based on an output of said weighing  
operation.
34. (Original) A method according to claim 33, wherein said supplying step comprises  
supplying said additives in pelletised form.
35. (Currently Amended) An apparatus for blending additives for incorporation in an asphalt,  
said apparatus including:  
means for feeding one or more of said additives into a receptacle;  
means for weighing each additive to achieve a desired proportion thereof in a desired  
total amount of said additives;  
means for mixing said additives in said receptacle into a blend; ~~and~~  
means for transferring said blend from said receptacle for delivery to an asphalt mixing  
box; and  
asphalt mixing box means for receiving said blend.

### REMARKS

Claims 1-35 are pending. By this amendment, the specification, drawings and claims 1, 8, 14 and 35 are amended. Claims 14-16 and 27-34 have been withdrawn from consideration. Therefore, claims 1-13, 17-26 and 35 are presented for consideration.

The January 5, 2003 telephone interview between Examiner Sorkin and Applicant's representative Mr. Hunt is made of record. The courtesies extended by Examiner Sorkin during the telephone interview are gratefully acknowledged. The substance of discussions during the telephone interview are incorporated into the following remarks.

#### **I. Restriction Requirement and Linking Claim 35**

Item 1 of the Office Action indicates that claim 35 is directed to elected Invention I. Item 1 also indicates that claim 35 is distinct from Invention II, and therefore is not a linking claim. MPEP § 802.01 indicates that for claims to be "distinct", for example as process and apparatus

for its practice, the claims must be patentable over each other. While claim 35 (the linking claim in elected Invention I) may be patentable over method claim 14 (in non-elected Invention II), Applicant questions whether claim 14 can be said to be patentable over claim 35. That is, method claim 14 sets forth a set of method steps that are precisely the method steps that are performed by means in claim 35. That is, if claim 35 were found in the prior art, claim 14 would likely not be patentable. This is often a hallmark of a classic linking claim. As a result, upon allowance of linking claim 35, applicant expects that the restriction requirement between Inventions I and II will be withdrawn and claims 14-16 and 27-34 will be considered in this application.

## **II. Objection to the Drawing**

Item 2 of the Office Action indicates that Figure 1 should be designated as “prior art”. Item 3 of the Office Action indicates that the drawings must show the claimed “vertical auger” and “control system”. A Request for Approval of Drawing Corrections is attached with amended Figures 1, 2 and 6. Figure 1 is amended to include the legend “prior art”. Figure 6 is amended to show the vertical auger and control system set forth in the claims. Figure 2 is amended to schematically show an asphalt mixing box, as this feature is also recited in the claims. The specification is amended to provide reference to these features added to the drawings, and no new matter is added. Approval of the amendments to Figures 1, 2 and 6 is requested.

## **III. Claims 1-13, 17-26 and 35 Define Patentable Subject Matter**

Item 7 of the Office Action rejects claims 1-6, 8-13 and 35 under 35 U.S.C. § 102(b) over U.S. Patent 4,498,783 to Rudolph. Item 8 of the Office Action rejects claims 1-13, 17-26 and 35 under 35 U.S.C. § 102(b) over U.S. Patent 5,908,240 to Hood. These rejections are respectfully traversed.

As is indicated in Item 6 of the Office Action and was discussed during the January 5 telephone interview, elected claims 1, 8 and 35 did not positively recite an asphalt mixing box as a required element of the claim. Claims 1, 8 and 35 have been amended to positively recite an asphalt mixing box or asphalt mixing box means as an element of the claim. The Examiner indicated during the telephone interview that the addition of an “asphalt mixing box” to these

claims may make them allowable, but further consideration would be required. Since neither Rudolph nor Hood teach or suggest an asphalt mixing box, neither of these references can anticipate claims 1, 8 and 35. Accordingly, claims 1, 8 and 35, and claims 2-7 and claims 9-13 which depend from claims 1 and 8, are allowable for at least the reasons set forth above.

Claim 17 recites a pneumatic pressure source connected to a transfer pipe that conveys said blend along said transfer pipe from near the output of said receptacle to the input of said asphalt mixing box. Hood does not teach or suggest a pneumatic pressure source connected to a transfer pipe that conveys a blend along the transfer pipe from near the output of a receptacle to the input of an asphalt mixing box. As a first matter, Hood does not teach or suggest a transfer pipe between an output of a receptacle and an input of an asphalt mixing box. In addition, although Hood discloses a pneumatic pressure source connected to a receptacle, i.e., air pressure introduced into the vessel 12 at an inlet 14, no air pressure or any other pneumatic pressure source is connected to a transfer pipe (e.g., pipe 40) at the output of the vessel 12.

Accordingly, Hood does not teach or suggest all of the features of claim 17. Claim 17, and claims 18-26 which depend from claim 17, are allowable for at least the reasons set forth above.

#### **IV. Conclusion**

Accordingly, this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-13, 17-26 and 35, as well as withdrawal of the restriction requirement and consideration of claims 14, 16 and 27-34, are requested.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the Applicant's representative at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,  
*Taylor et al., Applicants*

By: 

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Docket No. H00075/70076.US

Date: April 14, 2003

**X04/16/03X**



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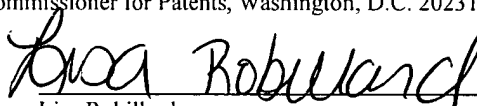
## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Taylor et al.  
Serial No: 09/898,900  
Confirmation. No.: 3612  
Filed: July 3, 2001  
For: ASPHALT ADDITIVE MIXING APPARATUS AND  
METHODS  
Examiner: David L. Sorkin  
Art Unit: 1723

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to BOX AMENDMENT Commissioner for Patents, Washington, D.C. 20231, on the 14<sup>th</sup> day of April, 2003.

  
Lisa Robillard

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BOX AMENDMENT  
Commissioner For Patents  
Washington, D.C. 20231

Sir:

Transmitted herewith are the following documents:

- ☒ [X] Response to Office Action mailed January 16, 2003;
- ☒ [X] Request for Approval of Proposed Drawing Corrections;
- ☒ [X] Drawings (3 pages); and
- ☒ [X] Return Receipt Postcard.

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at (617) 720-3500, Boston, Massachusetts.

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Page 2 of 2

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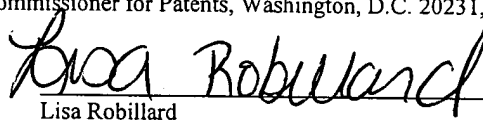
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